UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/524,928	03/14/00	AINSLEY K	0132-005

EXAMINER	
WARE, T	
ART UNIT	**PAPER NUMBER**
1615	2

HM22/0921

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DATE MAILED: 09/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/524,928	AINSLEY, KEITH	
	Examiner	Art Unit	
	Todd D Ware	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,5 and 9-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 4-5, and 9-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt of request for extension of time, amendment and declaration under 37 CFR 1.132 all filed 7-11-01 is acknowledged. Claims 3, and 6-8 have been canceled and claims 1, 2, 4-5, 9, 11 and 14 have been amended as requested. Claims 1-2, 4-5, and 9-16 are pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9, 11, 13, and 16 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his/her invention. Evidence that claims 9, 11, 13, and 16 fail to correspond in scope with that which applicant regards as the invention can be found in Paper No. 1 filed 3-14-00. In that paper, applicant has stated that this invention is directed to a lure for deer, elk, moose, and caribou, and while the language in claims 9, 11, 13, and 16 indicates that the invention is different from what is defined in the claims because it claims a method for any animal comprising urine from that animal species. For example, the claims include animals such as human beings, however it is submitted that the invention is not directed to a urine composition for attracting human beings. Utilization of Markush language, such as "for a designated species selected from the group consisting of deer, elk, moose, and caribou" both in the preamble and the body of the claim would overcome this rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-2, 4-5, and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collora et al (5,896,692; hereafter '692).

'692 discloses a scent lure for animals such as white tail deer, moose, or elk comprising animal urine wherein the urine is collected from more than one animal (abstract; C 2, L 1-30; claims). The urine collected is from animals in estrus or animals in rut and is collected using a urine-gathering stall. '692 does not specifically state that the contemplated animals are caribou or mule deer, however it would have been obvious to one skilled in the art at the time of the invention to formulate animal scent attractants for caribou or mule deer as they belong to the same family.

Response to Amendment

5. The declaration under 37 CFR 1.132 filed 7-11-01 is insufficient to overcome the rejection of claims 1-16 based upon Collora et al (5,896,692; hereafter '692) as set forth in the last Office action because: while the declaration states that the "Doc's Double Doe" formulation used is that described in the present patent application, the specification does not specifically reference the exact formulation of Doc's Double Doe

formulation while the specification provides several embodiments of the invention. Also, it is not clear whether the declaration is commensurate in scope with the claims. From the title, it appears "Doc's Double Doe" is made from urine from two female deer. The claims do not reflect such a limitation. Furthermore, it is unclear whether this urine was collected during estrus. The test was conducted during October 15 and October 30, 2000, during the breeding season. Urine collected from female deer in estrus would attract more male deer than urine collected from female deer not in estrus. At one point the declaration states that "various types of single doe urine scents" were used (another place in the declaration states that urine from one deer was used). The declaration does not state whether the urine from a single deer was from a female in estrus. If urine from a single doe (female) deer not in estrus was used in comparison to the "Doc's Double Doe" and if the "Doc's Double Doe" consisted of urine from two female deer in estrus, then male deer would preferentially be attracted to the "Doc's Double Doe" simply because of the hormones present in urine collected from a female deer in estrus. Furthermore, the declaration does not state that it compares the formulation of '692 with the formulation of the instant claims (MPEP 716.02(e)). To elaborate on this, '692 discloses formulations involving multiple deer. Thus, the declaration is insufficient as it does not compare urine from two deer with the formulation of '692 where the formulation of '692 is composed of urine from three deer.

6. Claims 1-2, 4-5, and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson, II (4,944,940; hereafter '940).

'940 teaches animal scent attractants comprising urine for attracting animals such as deer. '940 also teaches that the collected urine for the attractant is obtained from one individual animal. It is submitted that an animal scent attractant wherein the urine is obtained from one animal would not attract an animal differently from one wherein the urine is obtained from two animals. Stated differently, absent a demonstration of criticality, it is submitted that urine collected from two animals is not critical over urine collected from one animal.

7. Claims 1-2, 4-5, and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell (5,672,342; hereafter'342).

'342 teaches animal scent attractants comprising urine for attracting animals such as deer. '342 also teaches that the collected urine for the attractant is obtained from one individual animal the urine is collected using urine-gathering stalls. It is submitted that an animal scent attractant wherein the urine is obtained from one animal would not attract an animal differently from one wherein the urine is obtained from two animals. Stated differently, absent a demonstration of criticality, it is submitted that urine collected from two animals is not critical over urine collected from one animal.

Response to Amendment

8. The declaration under 37 CFR 1.132 filed 7-11-01 is insufficient to overcome the rejection of claims 1-10 and 1-16 based upon Christenson, II (4,944,940; hereafter '940) or Bell (5,672,342; hereafter'342), respectively as set forth in the last Office action

because: the previously noted deficiencies in the declaration apply again here, with the exception that '940 and '342 disclose urine collection from a single animal.

9. Claims 1-2, 4-5, and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson, II (4,944,940; hereafter '940) in view of Collora et al (5,896,692; hereafter '692).

'940 is relied upon for all that it teaches as stated previously. '940 does not teach a method of collecting the urine.

'692 is relied upon for all that it teaches as stated previously. More specifically, '692 is relied upon for teaching a method of collecting urine for an animal scent attractant.

Accordingly, it would have been obvious to one skilled in the art at the time of the invention to collect the urine for the animal scent attractants of '940 with the method taught in '692 with the motivation of providing an effective means for collecting urine for an animal scent attractant.

Response to Amendment

10. The declaration under 37 CFR 1.132 filed 7-11-01 is insufficient to overcome the rejection of claims 1-16 based upon Christenson, II (4,944,940; hereafter '940) in view of Collora et al (5,896,692; hereafter '692) as set forth in the last Office action because: the previously noted deficiencies in the declaration with respect to '692 apply again here.

Response to Arguments

11. Applicant's arguments filed 7-11-01 have been fully considered but they are not persuasive. Applicant's argues that the instant claims show unexpected results based upon the evidence provided in the Declaration under 37 CFR 1.132. However, as noted above, this declaration is insufficient to demonstrate unexpected results and the argument is not persuasive.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on 8:30 AM - 6 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600